

**Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Performance Measurements and Standards for Interstate |) | CC Docket No. 01-321 |
| Special Access Services |) | |
| |) | |
| Petition of US West Inc., for Declaratory Ruling |) | CC Docket No. 00-51 |
| Preempting State Commission Proceedings to Regulate US |) | |
| West's Provision of Federally Tariffed Interstate Services |) | |
| |) | |
| Petition of the Association of Telecommunications Services |) | CC Docket Nos. 98-147, |
| for Declaratory Ruling |) | 96-98, 98-141 |
| |) | |
| Implementation of the Non-Accounting Safeguards in |) | CC Docket No. 96-149 |
| Sections 271 and 272 of the Communications Act of 1934, |) | |
| as amended |) | |
| |) | |
| 2000 Biennial Regulatory Review-Telecommunications |) | CC Docket No. 00-229 |
| Service Quality Reporting Requirements |) | |
| |) | |
| AT&T Corp. Petition to Establish Performance Standards, |) | RM 10329 |
| Reporting Requirements, and Self-Executing Remedies |) | |
| Need To Ensure Compliance by ILECs with Their |) | |
| Statutory Obligations Regarding Special Access Services |) | |

**NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

The National Telephone Cooperative Association (NTCA)¹ hereby files its Initial Comments in the above-captioned proceeding concerning whether the Federal Communications Commission (Commission or FCC) should adopt a new set of measurements, standards and reporting requirements for evaluating the performance of incumbent local exchange carriers (ILECs) in the provision of special access services to competitors and interexchange carriers

¹ NTCA is a non-profit corporation established in 1954 and represents 550 rate-of-return regulated rural telecommunications companies. NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to their communities. All NTCA members are small carriers that are defined as "rural telephone companies" in the Communications Act of 1934, as amended (Act).

(IXCs).² NTCA respectfully requests that if the FCC does adopt new performance standards and reporting requirements for special access services, that the Commission not apply the new standards to rural telephone companies and sunset the standards once special access services are predominately provided to competitors and IXCs in a timely, efficient and non-discriminatory manner.

I. IF THE FCC ADOPTS NEW SPECIAL ACCESS PERFORMANCE STANDARDS, THEY SHOULD NOT APPLY TO SMALL, RURAL ILECS.

NTCA members provide special access services under tariffs subject to Sections 201 and 202 of the Act. Parties who have complaints concerning rural ILEC special access provisioning may file Section 208 complaints. There is no evidence demonstrating that the Section 208 complaint process is inadequate in the case of small ILEC special access provisioning. The complaints in this proceeding are against the large ILECs, *e.g.*, Verizon, US West now Qwest, and SBC Communications, for their alleged failure to provision loops and special access circuits to competitors in a timely, efficient and non-discriminatory manner. None of the complaints appear to allege that rural ILECs are committing the same offense. Indeed, there is no evidence of a need for new special access performance and reporting requirements for rural ILECs. Consequently, if the Commission adopts new performance, measurement and reporting requirements for special access services, the new requirements should apply only to large ILECs and not to rural telephone companies as defined in the Act.³

The adoption of any new special access performance standards and reporting requirements should not be used as a “clubbing instrument” against rural ILECs, particularly

They are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *In the Matter of Performance Measurements and Standards for Interstate Special Access Services*, Notice of Proposed Rulemaking, CC Docket No. 01-321, FCC 01-339 (rel. November 19, 2001)(NPRM).

given the fact that rural ILECs have done nothing to warrant such treatment.⁴ Rural carriers have not mistreated competitors and hence should not have “unnecessary regulations” imposed on them. As Chairman Powell stated a “case-specific analysis ... is a better way to do it” compared to an inflexible application of a one size fits all standard “because there are always some transactions above the line that you might think are good, and some below the line that get by that shouldn’t.”⁵ NTCA agrees that an individual case-specific review would be a better approach, if and when a special access complaint is filed against a rural ILEC. This approach is consistent with the Commission’s desire not “to impose unnecessary regulations on the market place if competition is working or where less intrusive mechanisms, such as enforcement, are adequate to achieve the statutory purpose of the Act”⁶ and recognizes the fact “that one size does not fit all when addressing the needs of rural and small companies.”⁷ Rural ILECs should not be penalized with new performance standards and reporting requirements based on the alleged wrongs committed by a handful of large carriers.

II. THE FCC SHOULD CLEARLY STATE THAT RURAL TELEPHONE COMPANIES EXEMPT PURSUANT TO SECTION 251(f)(1)(A) ARE NOT REQUIRED TO COMPLY WITH THE STANDARDS ESTABLISHED UNDER SECTIONS 272(e) AND 251(c).

NTCA believes new standards are unnecessary and would be extremely burdensome for Section 251(f) exempt carriers. It acknowledges, however, that the Commission has Section 201 and 202 authority over these carriers and their interstate services. NTCA also recognizes that

³ See 47 U.S.C. § 153 (37) for the definition of a “rural telephone company.”

⁴ *Telecommunications Reports*, Powell Interview: Chairman Powell touts progress on FCC restructuring, bolstering of engineering staff, and benefits to case-specific merger reviews, Vol. 68. No. 2, W-3, (January 14, 2002).

⁵ *Id.*

⁶ *In the Matter of Performance Measurements and Standards for Interstate Special Access Services*, Notice of Proposed Rulemaking, CC Docket No. 01-321, FCC 01-339, ¶ 19 (rel. November 19, 2001).

⁷ *In the Matter of the Multi-Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers* CC Docket 00-256, *Federal-State Joint Board on Universal service* CC Docket 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate of Return*

Section 272(e)(1) requires all Bell Operating Companies (BOCs) subject to interconnection and unbundling requirements of section 251(c) to fulfill any request from a competitor for telephone exchange service and exchange access within a period no longer than the period in which its provides such services to itself or its affiliates.⁸ The FCC has also determined that special access services are included within the broader category of exchange access services covered under Section 251(c).⁹ However, pursuant to Section 251(f)(1)(A) of the Act, rural telephone companies have a statutory exemption from all Section 251(c) duties and obligations, including those that relate to the provision of special access services to competitors. This exemption is effective until a state commission has decided pursuant to Section 251(f)(1)(B) to terminate the exemption. Therefore, if the Commission adopts new Section 251(c) performance measurements and standards for the provisioning of special access services, it should make clear that the new standards only apply to those carriers that are not exempt under section 252(f)(1)(A). Neither the FCC nor a state commission (without a bona fide request for interconnection, services, or network elements) can unilaterally terminate a rural telephone company=s section 251(f) exemption from the obligations of section 251(c), which would include any new special access obligations adopted by the Commission.¹⁰

Regulation CC Docket No. 98-77, and *Prescribing the Authorized Rate of Return for Interstate Services for Local Exchange Carriers* CC 98-166, FCC 01-304, Separate Statement of Michael K. Powell (rel. November 8, 2001).

⁸ *In the Matter of Performance Measurements and Standards for Interstate Special Access Services*, Notice of Proposed Rulemaking, CC Docket No. 01-321, FCC 01-339, ¶ 5 (rel. November 19, 2001).

⁹ *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order on Remand, CC Docket No. 98-147, 15 FCC Rcd 385, 406, ¶ 45 (1999).

¹⁰ *See In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147 and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, && 38-41, FCC 01-26 (rel. January 19, 2001)(“We clarify that no state commission can terminate a rural telephone company’s section 251(f)(1) exemption from the obligations of section 251(c), including the Commission’s line sharing obligation, absent a bona fide request for interconnection, services, or other network elements that the state commission determines is not unduly economically burdensome, is technically feasible, and consistent with section 254.”)

III. ANY NEW STANDARDS ADOPTED CONCERNING THE PROVISIONING OF SPECIAL ACCESS SERVICES SHOULD SUNSET ONCE THESE SERVICES ARE PREDOMINATELY PROVISIONED IN A TIMELY, EFFICIENT AND NON-DISCRIMINATORY MANNER.

If new special access performance standards, measurements and reporting requirements are established for large ILECs, the new rules should terminate once large ILEC special access services are predominately provisioned in a timely, efficient and non-discriminatory manner. As Chairman Powell stated “when I do a thorough survey of the kind of rules out there in the marketplace, to deal with some of the failings we see, I do not generally, after completing that review, find myself thinking, gosh, there are just not enough rules out there.”¹¹ If the marketplace is working and less intrusive mechanisms are adequate to achieve the goals of the Act, then special access standards and reporting requirements should sunset at that time. As for rural ILECs any new special access rules adopted in this proceeding should not apply to them.¹²

IV. CONCLUSION

If the Commission adopts new performance, measurement, and reporting standards for special access services, the new standards should not apply to rural telephone companies as defined in the Act. The FCC should also make clear that any new standards would apply only to those carriers that are not exempt under section 251(f)(1)(A). And, if the marketplace is working and less intrusive mechanisms are adequate to achieve the goal of provisioning special

¹¹ Forrester Research Telecom Forum Q&A with Chairman Powell (May 21, 2001).

¹² The Regulatory Flexibility Act (RFA) permits the FCC to adopt an alternative rule to obtain its objective in a less burdensome way on small entities. An exemption from any new special access measurements, standards and reporting requirements for all rural telephone companies would be consistent with the RFA and would not hinder the Commission’s efforts to achieve its goal of facilitating efficient competition in the provision of special access services. 5 U.S.C § 603.

access services in a timely, efficient, and non-discriminatory manner, then special access performance standards and reporting requirements should sunset at that time.

Respectfully submitted,

NATIONAL TELEPHONE COOPERATIVE
ASSOCIATION

By: /s/ L. Marie Guillory
L. Marie Guillory

By: /s/ Daniel Mitchell
Daniel Mitchell

Its Attorneys
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

January 22, 2002

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 01-321, FCC 01-339 was served on this 22nd of January 2002 by first-class, U.S. Mail, postage prepaid, to the following persons

/s/ Gail C. Malloy

Gail C. Malloy

Chairman Michael Powell
Federal Communications Commission
445 12th Street, SW, Room 8B201
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington D.C. 20554

Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

Qualex International
Portals II
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, D.C. 20554